

EXPERT TESTIMONY THAT DRUG ADDICTS ARE UNWORTHY OF BELIEF INADMISSIBLE

People v. Williams

6 N.Y.2d 18, 159 N.E.2d 549 (1959)

Defendant's conviction for selling heroin was based primarily upon the testimony of the State's principal witness, the buyer. This witness had been addicted to the use of heroin to the extent that for five years prior to the arrest he had daily introduced the drug hypodermically into his body. He had not used any drugs on the day in question nor at any time thereafter up to and including the day he testified, four months later.¹ A physician was called to give testimony on the effects of addiction upon the witness. The trial court determined that the offer of proof was for the purpose of establishing that a narcotic addict could not tell the truth. The expert testimony was held inadmissible by the trial judge. The New York Court of Appeals, two judges dissenting, affirmed, holding that in the absence of a clear and convincing showing to the full satisfaction of the court that such testimony was the consensus of medical and scientific opinion, the evidence is inadmissible.²

The authorities are in conflict concerning the admissibility of testimony showing addiction, or use of narcotics by a witness, for the purpose of attacking his credibility. The majority hold testimony admissible which tends to prove:

- (a) that he was under the influence of the drug while testifying, or
- (b) that he was under the influence of the drug when the events to which he testified occurred, or
- (c) that his mental faculties were actually impaired by the habit.³

The minority hold the broad view that evidence of the use of narcotics is admissible generally for impeachment purposes.⁴

Once the fact of being under the influence or the addiction is shown, the problem is the permissible scope of expert testimony regarding the characteristics of an addict or the effect the use has on his credibility as a witness.

But it would seem clear that this evidence would be immaterial unless it was proposed to follow it up by showing the effect of such drug upon the capacity of perception, for otherwise, how is the

¹ He was permitted, however, to receive two injections of "dope" at a hospital after his arrest on the day of the sale.

² The dissenting judges felt the record sufficiently showed that the purpose was not merely to show whether or not such a person as the witness could be sincere, but was for the purpose of showing the general characteristics of a person addicted to drugs.

³ Annot., 52 A.L.R.2d 848 (1957). Admissibility of testimony under these circumstances is treated on the general principles connected with intoxication; the addiction goes to affecting the perception, memory, or ability to narrate of the witness.

⁴ Annot., 52 A.L.R.2d 848 (1957). Under this view the effect, if any, of addiction upon the veracity of the witness is admissible.

jury to know the effect of the drug? It would hardly seem that courts are already willing to go so far as to hold that the effect of narcotic addiction upon the testimonial capacity of its user is so well known that jurors may take notice of it without the necessity of proof.⁵

Testimony as to the effect addiction has upon the witness's perception, memory, and narration is generally held to be admissible.⁶ The divergence of opinion arises when the proponent desires to include evidence of the effect the addiction has upon the witness's "sincerity," "veracity," "truthfulness," or "worthiness of belief," as was attempted in the instant case.⁷ Had the proponent clearly indicated to the court that his purpose was to show the characteristics of a narcotic user as to perception or memory, and steered clear of any reference to sincerity, veracity, truthfulness, or worthiness of belief, a different result would have been likely.

The basis which courts often assert for refusing to allow testimony concerning the sincerity of a narcotic user is that to do so would entangle the court in the trial of a "collateral matter."⁸ This *alone* would appear insufficient reason for exclusion since "collateral" questions are often appropriate when their answers will aid the jury in reaching a determination. It is more likely that the true basis for exclusion is the fear of undue influence on the jury. The courts fear that a scientific opinion that goes to the ascertainment of the truth or falsity of a witness's testimony may be given undue weight and that the jury is likely to replace what should ultimately be their determination⁹ with that of the expert. Had there been a showing that the testimony in the instant case, was the consensus of scientific opinion, the court would have apparently felt such influence warranted. This lack of faith in the jury should be questioned when it is considered that courts rely exclusively upon the jury to determine many difficult problems, such as the "prudent man" principle in tort liability.

⁵ Rossman, "The Testimony of Drug Addicts," 3 Ore. L. Rev. 81, 102 (1924).

⁶ "[T]he question should have been followed up by a statement or assurance that defendant expected to show that the habit was so excessive as to impair the memory of the plaintiff." *Standard Oil Co. v. Carter*, 210 Ala. 572, 575, 98 So. 575, 577 (1924).

⁷ "But by the form of the question the witness was asked to express his opinion as to the effect of such use upon the veracity of the witness, and, so limited, the exclusion of the answer was proper." *State v. Robinson*, 12 Wash. 491, 497, 41 Pac. 884, 886 (1895); "One of the major contentions of appellant is that the trial court committed prejudicial error in limiting Dr. Shaw's testimony, in effect, to his opinion as to what effect addiction would have on memory and perception and ability to narrate, but preventing testimony as to the effect of addiction on veracity." The court held these restrictions were proper. *People v. Bell*, 138 Cal. App.2d 7, 10, 291 P.2d 150, 151 (1956).

⁸ "Whether the witness was a confirmed opium eater or not, or whether the indulgence renders the user unreliable and untruthful in his statements, was a collateral issue, which the court properly declined to try." *State v. King*, 88 Minn. 175, 181, 92 N.W. 965, 968 (1903); *Katleman v. State*, 104 Neb. 62, 175 N.W. 671 (1920) (relying on *State v. King*). It is to be noted that in both cases the attack upon the witness went to his reliability and truthfulness.

⁹ See, e.g., 4 Jones, *Evidence* § 990 (5th ed. 1958); 58 Am. Jur. "Witnesses" § 862 (1948); 42 Ohio Jur. "Witnesses" § 430 (1936).

The few courts¹⁰ admitting expert testimony for this purpose cite medical treatises which state that addiction renders a person unworthy of belief, or they merely make the broad statement that the fact is well known.¹¹ However, one questions if it can be said to be an established fact in light of many contrary opinions of experts in the field.¹² Several other cases¹³ that are sometimes cited in support of admissibility do not lend much support since their reports do not make it clear that the purpose of the proffered testimony was to establish lack of sincerity.

In summary then, a witness who is a drug addict may be impeached in the usual manner if his addiction has led him to be held in ill repute in the community. He may be impeached if he was under the influence of the drug at the time of testifying or at the time the event to which he is testifying occurred; or if his addiction was to the extent that there is shown to be an actual impairment of his faculties. This is accomplished by showing the effect the addiction has upon the perception, memory or narration of the witness. But the courts generally, and the court here, will not extend impeachment of his credibility (in the absence of scientific acceptance) to include the effect the addiction has on his sincerity and thereby label him as unworthy of belief.

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¹⁰ *Vamvas v. United States*, 13 F.2d 347 (5th Cir. 1926); *State v. Fong Loon*, 29 Idaho 248, 158 Pac. 233 (1916); *Effinger v. Effinger*, 48 Nev. 205, 228 Pac. 615, *on rehearing* 239 Pac. 801 (1925); *Lankford v. Tombari*, 35 Wash.2d 412, 213 P.2d 627 (1950).

¹¹ "We believe it will be admitted that habitual users of opium, or other like narcotics, become notorious liars." [Then quotes to this effect from 3 Wharton & Stillé, *Medical Jurisprudence* § 1111 (3d ed. 1873)], *State v. Fong Loon*, *supra* note 10; "The mental confusion and impairment of moral character produced by the habitual use of morphine, cocaine, or a like narcotic are established facts in medical research." *Effinger v. Effinger*, *supra* note 10; "The habitual use of opium . . . is known to utterly deprave the victim of its use, and render him unworthy of belief." *State v. Concannon*, 25 Wash. 327, 335, 65 Pac. 534, 537 (1901); for medical support that drug addicts are pathological liars see comprehensive list in *Rossman*, *supra* note 5.

¹² Kolb, "Drug Addiction in Its Relation to Crime," 9 *Mental Hygiene* 74; Kolb, "Pleasure and Deterioration from Narcotic Addiction," 9 *Mental Hygiene* 699; Bishop, *The Narcotic Drug Problem* 22 (1920); Hawkins, *Opium Addicts and Addiction* 40 (1937); for a discussion of numerous treatises on the subject, see *Kelly v. Maryland Cas. Co.*, 45 F.2d 782 (W.D. Va. 1929), *aff'd*, 45 F.2d 788 (4th Cir. 1930).

¹³ *Chicago & N.W.R.R. v. McKenna*, 74 F.2d 155 (8th Cir. 1934) (effect which continued addiction might have upon one's mental faculties); *People v. Hamby*, 6 Ill. 2d 559, 129 N.E.2d 746 (1955) (fact of narcotics addiction has an important bearing upon credibility); *People v. Crump*, 5 Ill.2d 251, 125 N.E.2d 615 (1955) (jury entitled to know whether witness had been a drug addict or had used narcotics on the day of the alleged crime); *State v. Prentice*, 192 Iowa 207, 183 N.W. 411 (1921) (can show effect of such use on mind and memory); *Markowitz v. Markowitz*, 290 S.W. 119 (Mo. Ct. App. 1927) (the testimony was to the general effect upon the mental and moral condition of the addict); *Beland v. State*, 86 Tex. Cr. R. 285, 217 S.W. 147 (1920) (fact of habitual use should be admitted as a circumstance to be considered by the jury in determining witness's memory and mental condition).